Supreme Court, U.S.
FILED
NOV 8 1995
OFFICE OF THE CLERK

No. 95-914

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

EDITH HOROWITZ BROIDA, PETITIONER

V.

ESTATE OF MAURICE HOROWITZ, DECEASED, Through Its Personal Representative Samuel S. Smith, et al.,

Respondents

On Petition for Writ of Certiorari to the United States Eleventh Circuit Court of Appeals

PETITION FOR A WRIT OF CERTIORARI

APPENDIX

EDITH BROIDA
Pro Se
P. O. box 5941
Washington, D. C.
20016
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IN THE UNITED STATES COURT OF
APPEALS FOR THE ELEVENTH CIRCUIT
NO. 93-5023

August 10,1995

EDITH HOROWITZ BROIDA
a/k/a Edith Broida
Plaintiff-Appellant
versus

Samuel S. Smith, individually and as personal representative of the Estate of Maurice Horowitz and as attorney for personal representative, Milton Kelner, as guardian-ad-litem and attorney for guardian-ad-litem, Gene S. Rosen, individually, and representing Stacie Broida Merrett and Thomas Blaine Merrett, Bernard B. Weksler, as attorney representing Alvin Edward Horowitz, Paula Horowitz Roth, Stephen R. Horowitz, Betsy S. Nieves, Karen Horowitz Kaplan, and Paula Horowitz Roth as assignee of Stephen R. Horowitz, Betsy H. Nieves, et al.,
Defendants- Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

ON PETITION FOR REHEARING
Before: Anderson, Edmondson and Carnes, CIRCUIT JUDGES
PER CURIAM:
The petition for rehearing filed by EDITH HOROWITZ BROIDA, is denied.

ENTERED FOR THE COURT:
/S/ J. L. Edmondson
UNITED STATES CIRCUIT JUDGE
ORDER: (Separate Order, August 10,1995
Appellant's motion for oral hearing on petition for rehearing,is denied
/S/ J. L. Edmondson
Circuit Court Judge

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
NO. 93-5023
Non- Argument Calendar
D. C. Docket No. 92-997-CV-CCA

EDITH HOROWITZ BROIDA, April 27, 1995
a/k/a Edith Broida
Plaintiff-Appellant

versus

Samuel S. Smith, Individually and as personal representative of the Estate of Maurice Horowitz and as attorney for personal representative, Milton Kelner, as guardian-ad-litem and attorney for guardian-ad-litme,
Gene S. Rosen, Individually, and representing Stacie Broida Merrett and Thomas Blaine Merrett,
Bernard B. Weksler as attorney representing Alvin Edward Horowitz, Paula Horowitz Roth, Stephen r. Horowitz,
Betsy S. Nieves, Karen Horowitz Kaplan, and Paula Horowitz Roth as assignee of Stephen R. Horowitz, Betsy H. Nieves, et al.,
Defendants-Appellees

Appeal from the United States District Court for the Southern District of Florida

(april 27, 1995)

Before ANDERSON, EDMONDSON AND CARNES, CIRCUIT Judges

PER CURIAM:

Edith Broida appeals the district court's dismissal of her pro se action for lack of subject matter jurisdiction. Because there was no diversity jurisdiction, we affirm. In addition, we deny each of the appellant's motions*

AFFIRMED
MOTIONS DENIED

*(1) Appellant's motion and renewed motion for oral argument;
(2) Appellant's motion to strike brief of appellees Betsy Nieves and Paula Roth; and
(3) Appellant's motion to file separate briefs.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
NO. 93-5023

April 27, 1995

EDITH HOROWITZ BROIDA, a/k/a
Edith Broida,
versus Plaintiff-Appellant
Samuel S. Smith, et al.
(same style)
Defendant-Appellees

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA
ORDER:

Appellant's motion "to accept Appellant filing of separate briefs," construed as a motion to file two reply briefs, is denied.

Appellant's alternative motion to exceed the page limitation for her reply brief is denied.

Appellant's motion to refer the previously filed motion to strike to "the panel that hears and reviews the appeal "construed as a motion to refer the motion to strike to the screening panel is granted.

J. L. Edmondson
UNITED STATES CIRCUIT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

EDITH HOROWITZ BROIDA,
Plaintiff,
vs.
Estate of Maurice Horowitz
through Samuel S. Smith as
Personal Representative, etc. at al.,
Defendants.

Case No.92-997
Civ-ATKINS

ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING DEFENDANTS MOTIONS TO DISMISS AND DENYING PLAINTIFF'S MOTION FOR HEARING AND MOTION TO FILE SUPPLEMENTAL OBJECTIONS

THIS CAUSE is before the court on the following;(1) Defendant Samuel S. Smith's Motion to Dismiss (D.E. 9); (2) Defendant Gene S.

Rosen's Motion to Dismiss (D.E. 10); (3) Motion of Defendant Karen H. Kaplan to Dismiss (D.E. 29); (4) Motion to Dismiss of Betsy H. Nieves (D.E. 38)(5)Plaintiff Motions for Hearing (DE 77 and DE 80)and to Respond to Law in Magistrate's Report and Recommendation (DE 79)After careful review of the motions, the Magistrate Judge's Report and Recommendation (DE 75), the relevant law and plaintiff's objections to the Report and Recommendation (DE 78), it is

ORDERED AND ADJUDGED as follows:

(1) The Magistrate Judge's Report and Recommendation (DE 75) is hereby ADOPTED IN FULL and made the order of this court. Accordingly, it is further

ORDERED AND ADJUDGED that

(2) Defendant Samuel S. Smith's Motion to Dismiss (DE 9) is GRANTED:

(3) Defemdamt Gene S. Rosen's Motion to Dismiss (D E 10) is GRANTED:

(4) Motion of Defendant Karen H. Kaplan to Dismiss (DE 29) is GRANTED;

(5) Motion to Dismiss of Betsy H. Nieves (DE 38) is GRANTED; and

(6) This action is dismissed with prejudice.

In addition,

(7) Plaintiff's Motion for Hearing (DE77)and (DE80) and for Five Days to Respond to Law in Magistrate's Report(DE79) are DENIED.

Plaintiff has had ample opportunity to present her legal arguments on this issue, has already filed lengthy objections to the Report and Recommendation and, as she acknowledges, has previously submitted applicable case law. Thus, the court finds it unnecessary to hear additional argument or to receive additional memoranda on this matter.

DONE AND ORDERED AT Miami, Florida,this 7th day of June, 1993.

C. Clyde Atkins

SENIOR UNITED STATES DISTRICT JUDGE

CC: The Honorable Ted E. Bandstra
All counsel of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE NO. 92-997-CIV-ATKINS

EDITH HOROWITZ BROIDA,
Plaintiff

vs.

ESTATE OF MAURICE HOROWITZ,
through its Personal Representative
Samuel S. Smith, et al.,
Defendants.

REPORT AND RECOMMENDATION

THIS CAUSE is before the Court on (1) defendant Samuel S. Smith's Motion to Dismiss filed on May 26,1992; Defendant Gene S. Rosen's Motion to Dismiss filed on May 27, 1992; (3) Motion of Defendant Karen H. Kaplan to Dismiss filed on June 18, 1992; and Motion to Dismiss of Defendant Betsy H. Nieves filed on July 9,1992. On June 29, 1992 these and all other pretrial Motions in this case were referred to United States Magistrate Judge Ted E. Bandstra by the Honorable C. Clyde Atkins pursuant to 28 USC Sec.636(b). Accordingly the undersigned heard oral argument on these motions on September 10, 1992, and thereafter granted the parties (60) days leave to conduct discovery solely on the issue of this Court's diversity jurisdiction over this action and to file supplemental motions to dismiss together with any factual materials obtained through discovery on this jurisdictional issue. Following the conclusion of this limited discovery period, the undersigned conducted a supplemental hearing on these motions to dismiss on April 6, 1993. Having carefully considered the pleadings, all materials relevant to the jurisdictional issue, oral argument of counsel and appli-

cable law, the undersigned respectfully recommends that all four motions be GRANTED due to this Court's lack of subject matter jurisdiction as explained below.

INTRODUCTION

On May 1, 1992 Edith Horowitz Broida ("plaintiff"),proceeding pro se, commenced this action by filing a complaint against the Estate of Maurice Horowitz, its personal representative, its distributees and their counsel ("defendants"), for "payment of claims" allegedly due and owing from the Estate which was previously administered and discharged in the Circuit Court of the Eleventh Judicial Circuit of Florida in and for Dade County, Probate and Guardian Division (Case No. 78-1333). In Count I, plaintiff, the daughter of the decedent, seeks payment of $195,000 for prior debts of decedent allegedly owed to plaintiff. In Count II, plaintiff, appears to claim monies allegedly borrowed from from the Estate of Ann Horowitz (plaintiff's deceased mother) to fund the Estate of Maurice Horowitz. In Count III, plaintiff seeks payment for debts allegedly due to the Estate of Ann Horowitz. In Count IV, plaintiff seeks the return of the unused portion of the family allowance and elective share with interest. In Count V, plaintiff seeks payment of fees for the legal services she allegedly performed on behalf of her family members pursuant to an agreement. In Count VI plaintiff seeks additional payment for legal services she allegedly rendered in connection with a prior eminent domain proceeding. Finally,plaintiff demands in Count VII, that the distributees and attorneys repay the monies

they have received from the Estate.

Plaintiff alleges that the Court has original jurisdiction to entertain this action based on diversity of citizenship pursuant to 28 U.S.C. Sec 1332. Specifically plaintiff alleges that she is a citizen of Washington, D. C., and that all other defendants, with the exception of Stephen H. Horowitz, are citizens of the State of Florida. Defendant Stephen H. Horowitz is alleged to be a citizen of California. In addition, plaintiff invokes the federal question jurisdiction of this Court conferred by 28 U.S.C. Sec. 1331 based on alleged civil rights violations under 42 U.S.C. Sec. 1983.

Defendants Samuel S. Smith, individually and as personal representative of the Estate of Maurice Horowitz; Gene S. Rosen, individually and as counsel for certain distributees; and Karen H.Kaplan and Betsy H. Nieves, distributees, have moved to dismiss this action on several grounds. First, defendants argue that this Court lacks subject matter jurisdiction over the complaint in that there is no diversity of citizenship between plaintiff and defendants. In support thereof, defendants argue that at all times since the commencement of this action, plaintiff has been a citizen and resident of the State of Florida. Defendants further note and the complaint alleges that most of the defendants are citizens of Florida. Consequently Defendants argue that diversity of citizenship cannot serve as a basis for establishing this Court's jurisdiction over the subject matter of the complaint.

Second, defendants argue that

plaintiff fails to state a claim for civil rights violations arising under 42 U.S.C. Sec. 1983 so that this statute cannot confer original jurisdiction upon this Court.

Third, defendants argue that the claims alleged in plaintiff's complaint, either directly or indirectly, relate to the prior administration and/or distribution of the Estate of Maurice Horowitz which has been resolved pursuant to a final judgment entered in the Probate Division of Dade County Circuit Court on December 8, 1989. See, In Re Estate of Maurice Horowitz, Case No. 78-1553. Defendants argue that all issues raised by the instant complaint have been previously adjudicated in the state probate proceedings. Thus, defendants contend that the doctrines of res judicata and collateral estoppel bar plaintiff from relitigating her claims in federal court.[1]

CONCLUSIONS OF LAW

A. Diversity Jurisdiction

The primary issue raised in these motions is whether this Court has subject matter jurisdiction over the claims raised in the complaint. As discussed above, plaintiff attempts to invoke this Court's jurisdiction based on diversity of citizenship pursuant to 28 U.S.C.(1332(a)(1), by alleg-

[1] In response to defendants' motions to dismiss, plaintiff has filed a series of motions to strike(D.E.23,31,59), which the undersigned has addressed by separate order.

ing that she is a citizen of Washington D.C., and that defendants are citizens of Florida and California. Defendants challenge plaintiff's allegation of out-of-state citizenship, arguing that plaintiff is actually a citizen of Florida and therefore jurisdiction fails for lack of complete diversity.

Evaluating this issue, the undersigned begins by noting that 28 U.S.C. Sec. 1332(a)(1) provides:

> (a) The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum of value of $50,000, exclusive of interest and costs, and is between-
>
> (1) citizens of different states;....

As the party seeking to invoke this Court's jurisdiction under this diversity statute, plaintiff has the burden of proving that complete diversity of citizenship exists between the parties, i,e, plaintiff must have citizenship different from that of each defendant. Hawes v. Club Ecuestre El Comandante, 598 F2d 698, 702(1st Cir.1979). Such diversity of citizenship must exist at the time this action was filed. Smith v. Sperling, 354 U.S. 91,93,n1(1957).

In order to be a citizen of a state the meaning of the diversity provision a natural person must be both a citizen of the United States and a domiciliary of a state. Las Vistas Villas,S.A. v. Petersen, 778 F. Supp 1202,1204(M.D. Fla. 1991). [2] In this context, citi-

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2The word "States" as used in Sec. 1332 includes the District of Columbia. See 28 U.S.C. Sec. 1332 (d).

zenship and domicile are synonymous. Freeman v. Northwest Acceptance Corp, 754 F2d 553,555(5th Cir.(1985).Domicile is defined as"a residence at a particular place accompanied with positive or presumptive proof of an intention to remain there for an unlimited time." Id.,quoting Mitchell v. 88 U.S. (21 Wall) 350,352 (1875). Simply stated, domicile is determined by two factors; residence and intention to remain. Las Vistas Villas, at 1204. In examining these two factors, a court must consider the totality of the evidence of a person's contacts with a state and of her intent to remain there. See Willis, 651 F.Supp at 601. Thus, domicile is evaluated in terms of objective facts so that statements of intent are entitled to little weight when in conflict with facts. See Freeman v. Northwest Acceptance Corp, 754 F2d at 556.

In this case, the objective facts reveal that plaintiff moved to Miami Beach, Florida in November 1934. She attended college in Florida and thereafter began her working life in a women's apparel store operated by her father on Miami Beach . Plaintiff married in 1941 and gave birth to a daughter in Miami Beach on Septtember 21, 1943. Following plaintiff's divorce in 1949, she attended law school at the University of Miami where she earned a law degree. In 1954, plaintiff became a member of the Florida Bar and began practicing law. In January 1963 plaintiff moved to Washington D. C. where she obtained employment with the federal government and participated in several organizations and/or programs including the Foggy Bottom Neighborhood Association, the "Future for

Jimmy" program and the "Upward Bpund"* Program. While maintaining her residence in Washington D.C., plaintiff periodically returned to Florida for extended visits between 1963 and 1971 to attend to family matters. In 1972* plaintiff returned to Florida in order to handle eminent domain proceedings involving her parents' residence on Miami Beach. After approximately five years of litigation, these proceedings concluded and plaintiff returned to Washington D.C. for a brief period of time* Upon the death of plaintiff's mother in 1977, plaintiff returned to Florida where she has continuously spent the last sixteen years embroiled in litigation concerning the probate of both her parents' estates and other related matters. In 1986 plaintiff ran for Dade County Circuit Court Judge. Her campaign brochure lists a myriad of organizations in which plaintiff was a member including, inter alia, the Florida Bar, the Florida Association of Women Lawyers, The Miami Beach Bar Association, The City of Miami Downtown Planning Commission,and Miami Citizens Against Crime. Plaintiff last voted in Florida in 1986.

Most significantly, at the commencement of this lawsuit, and continuing to date, plaintiff receives her mail at a P.O. Box located in Miami Beach, Florida. She maintains an unlisted telephone number in Florida and utilizes an answering located in North Miami. Plaintiff does not presently have a phone listing in Washington D.C. Plaintiff also has a valid driver's license issued by the State of Florida and owns an automobile registered in Florida. Indeed, plaintiff spends and has spent the overwhelming majority of her time in Florida since 1977 except for brief round-

*Petitioner's Note Paid Director by D.C. Model School Div. See Ap;*1974 *Proceedings concluded 1984 for Estate

trip visits to Washington D. c. primarily on her birthday or during the holiday season.

Notwithstanding this evidence, plaintiff urges this Court to view her presence in Florida since 1977 as temporary based on her desire to return to Washington, D.C., her 'declared' domicile, and the presence of her alleged physical residence in Washington D.C. In support thereof, plaintiff points to a petition for removal dated December 7, 1987, filed in a prior probate proceeding, in which she alleges that she was a citizen of the State of Florida until December 4, 1987, when she declared that she was a citizen of Washington D.C. Specifically the petition provides in pertinent part:

> The above-entitled action wholly involves citizens of different states. At the commencement of this action in Dade County, Florida, petitioner herein was a resident and citizen of Dade County, Florida , as were the other named defendants in the suit.
>
> a. Petitioner Edith Horowitz Broida is no longer a citizen of Dade County, Florida although residing in Florida. Said petitioner has declared her citizenship as being the District of Columbia, Washington, D. C. where she established residence in January 1963 and has maintained it continuously since. Petitioner declares that citizenship as of December 4, 1987.

See D.E. 55, Exhibit A.[3] Based pri-

[3] Significantly, the proceedings which plaintiff attempted to remove via this petition were remanded to state court.

marily on this"declaration", plaintiff contends that she was a citizen of Washington D. C. at the commencement of this action. See Ogden v. Ogden, 33 So2d 870 (Fla. 1947)("the best proof of one's domicile is where he says it is.") Plaintiff's position is further exemplified by her deposition testimony in which she stated:

Q. Specifically you say you changed your domicile. In a nutshell, how did you do that?

A. By saying so. That's how you do that?

Q. Other than your declaration, what changed on December 4, 1987?

A. Other than my declaration, what changed?

Q. Yes.

A. My declaration changed where I am domiciled.

Broida Deposition,pages 38-39.

With regard to plaintiff's alleged residence in Washington, D. C., plaintiff submits a copy of a letter from Liberty Mutual Insurance Company, Fairfax, Virginia, dated August 17, 1992, stating that it has been issuing homeowners insurance policies on the "Washington D.C. residence of Edith Broida" from 1979* through 1992 and that it also insures her automobile. See Docket Entry 42. However, plaintiff fails to submit the actual policies on this alleged residence. In addition, plaintiff failed to provide an address for this residence or information on whether she owns or rents the residence. Indeed, plaintiff candidly stated,"I will not answer any questions about my residence in either location, in Miami or Washington, and don't ask me any more

*Petitioner's note: error, the letter, Appendix,states date of 1976.

questions on it." Broida Deposition, page 16.

As further evidence of a Washington, D.C. domicile, plaintiff submits the affidavits of Martha Neham Edelstein and Phyllis Shampanier, two long time acquaintances of plaintiff,* who both attest, based on conversations with plaintiff, that plaintiff has a residence in Washington, D. C.*

Reviewing the objective facts outlined above, the undersigned finds that plaintiff has failed to sustain her burden of showing that she is a citizen of Washington, D. C. Specifically, the undersigned places little weight on plaintiff's "declaration" and proof of residency in view of the objective evidence indicating to the contrary. As stated by the Fifth Circuit in Freeman v. Northwest Acceptance Corp. supra:

...Words may be evidence of a man's intention to establish his domicile at a particular place of residence, but they cannot supply the fact of his domicile there. In such circumstances, the actual fact of residence and a real intention of remaining there, as disclosed by his entire course of conduct, are the controlling factors in ascertaining his domicile.

Here, plaintiff's course of conduct does not show that she ever changed her domicile from Florida to Washington D.C. at any time after her declaration in 1987. Significantly, - plaintiff has failed to present any objective evidence whatsoever of any severing of ties to her Florida domicile subsequent to this declaration.

* Petitioner's Note. two 'friends', Edelstein visited Pet. in her Washington residence; colleague Shampanier wrote her in Washington. See Ap

Moreover, the complaint's factual allegations reflect plaintiff's continuous residency in Dade County, Florida since approximately 1977.*

In summary, the undersigned finds that Plaintiff was a citizen of Flor ida at the time she filed this action. Accordingly, the undersigned recommends that defendant's motions to dismiss be granted pursuant to Fed.R. Civ.P. 12(b)(1) for lack of diversity jurisdiction.

B. Federal Question Jurisdiction

Defendants next contend that plaintiff has failed to establish this Court's jurisdiction based on federal questions arising out of her civil rights claim brought pursuant to 42 U.S.C. Sec. 1983. In order to state a claim under Sec. 1983, a complaint must adequately allege that the conduct complained of (1) was committed by a person acting under color of state law, and (2) deprived the complainant of rights, privileges, or immunities secured by the Constitution of law of the United States. Harvey v. Harvey, 949 F2d 1127(11th Cir. 1992), citing Flagg Brothers, Inc. v. Brooks, 436 U.S. 149, 156-57, 98 S. Ct. 1729,1733 (1978).

Reviewing the complaint, the undersigned finds that plaintiff has failed to allege that she was deprived of any right or privilege protected by the United States Constitution or any federal law. Plaintiff alleges that the defendant lawyers improperly influenced the judges presiding over plaintiff's state court proceedings in violation of her constitutional rights to due process and equal protection of the law. Cpt.para 10. However, plaintiff fails to allege any state action on the part of

*Petitioner's note: Ignored by the Court- she has been personal representative and attorney for 2 estates.

the lawyer defendants as required for a civil rights claim. See Fast v Wead, 509 F.Supp. 744(N.D. Ohio 1981) (conduct of clients in representing clients does not constitute state action under color of state law). Accordingly, the undersigned finds that plaintiff has failed to state a claim under 42 U.S.C. Sec. 1983. In so finding , the undersigned notes that plaintiff apparently fails to comprehend that the federal courts ordinarily have no jurisdiction to review state court proceedings. Explaining the court's lack of jurisdiction in an analagous matter , the Honorable James Lawrence King stated:

> The plaintiff has wrongfully involed this court's original jurisdiction to entertain what is essentially a request for an appellate review of the above-described state court ruling. Therefore, the complaint in its entirety is dismissed, pursuant to FED.R.Civ. P. 12(b)(1), for lack of jurisdiction over the subject matter. It is well settled law that a plaintiff may not seek review of a state court ruling simply by alleging a civil rights violation in his complaint. Even where there is a constiutional error in the state court's decision, the plaintiff's sole recourse is to the state appellate court or the United States Supreme Court, not to the United States District Court. See Hagerty v. Succession of Clement, 749 F2d 217(5th Cir. 1984); Reynolds v. State of Ga., 640 F2d 702 (5th Cir.1981) Dist. of Columbia Court of Appeals v. Feldman, 103 S.Ct. 1303(1983);

Rooker v. Fidelity Trust Co., 44 S.Ct 149 (1923).

See Final Order Granting Defendant's Motion to Dismiss, Pruessman v. McDonald, Case No. 89-1613-Civ-King (S.D. Fla. 1989). Here, as in Preussman, plaintiff's recourse is to the state appellate court or to the United States Supreme Court. The fact that plaintiff was unsuccessful in these forums does not provide this federal court with jurisdiction to decide her claims.*

SUMMARY

Based on the foregoing, the undersigned recommends:

(1) that Defendant Samuel S. Smith's Motion to Dismiss be GRANTED:

(2) that Defendant Gene S. Rosen's Motion to Dismiss be GRANTED:

(3) that the Motion of Defendant Karen H. Kaplan to Dismiss be GRANTED; and

(4) that the Motion to Dismiss of Betsy H. Nieves be GRANTED."

The parties may serve and file written objections to this Report and Recommendation with the Honorable C. Clyde Atkins, United states District Judge, within ten (10) days of receipt. See 28 U.S.C. Sec 636(b)(1)(C); United States v. Warren, 687 F2d 347 (11th Cir.1982),cert.denied, 460 U.S. 1087 (1983); and Hardin v. Wainright, 678 F2d 589(5th Cir.Unit B 1982); see also Thomas v. Arn, 474 U.S. 140(1985)

RESPECTFULLY SUBMITTED in Miami, Florida, this 20th day of May, 1993.

/S/ Ted E. Bandstra
TED E. BANDSTRA
UNITED STATES MAGISTRATE JUDGE

* Petitioner's Note: Hon. King is a fellow Distr. court Judge, and not a

Copies furnished to:
Honorable C. Clyde Atkins
All counsel of record

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[4] Having so recommended, the undersigned finds it unnecessary to address defendants' res judicata and collateral estoppel arguments as further grounds for dismissal.

n

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*Petitioner's note cont'd: reported decision. We have no knowledge of that case. This Magistrate ignored petitioner's cited federal law for suits between heirs on claims, and state probate law providing such suit. This case was not decided in state court but dismissed in violation of civil rights as influenced by defendant lawyers conspracy with state judge. Magistrate refused petitioner to argue grounds other than diversity but here rules on them, a further civil rights due process violation.

CENTERPOINT II
SUITE 500
4000 Legato Road
Fairfax, Virginia 22033-4003
Telephone (703) 385-4444
FOR MAIL ONLY
P.O. Box 900
Fairfax, Virginia 22030-0609

LIBERTY
MUTUAL

August 17, 1992

This is to certify that Liberty Mutual Insurance Company, Fairfax Virginia office has been issuing Homeowner's Insurance policies on the Washington, D. C. residence of Edith H. Broida every year from 1976 to and including 1992.

This Virginia office services the Greater Washington area.

In addition Mrs. Broida's automobile has been continuously insured by this office since before 1976.

Service Manager
Title

/S/ Sheila Mitchell

METROPOLITAN DADE COUNTY, FLORIDA
METRO-DADE (Logo)

(LOGO)
METRO DADE CENTER
OFFICE OF THE SUPERVISOR OF ELECTIONS
SUITE 1910
111 N.W. 1st Street
Miami, Florida 33128-1962
306-375-5563

Mailing Address:
P.O.Box 012241
Miami, Florida
33101-2241

September 11, 1992

To whom it may concern:

The Metro-Dade Elections Department has records showing that Edith E. Broida last registered to vote on March 27, 1950. Anytime an elector does not vote in a two year period a notice is sent out to keep the elector's registration records active.

No response was made to a notice sent to Ms Broida, therefore her record was purged in 1989.

The last time she voted was November 4, 1986.

Very truly yours,

/s/Milton L. Collins
Milton L. Collins
Assistant Supervisor of Elections

AFFIDAVIT OF MARTHA NEHAM EDELSTEIN

STATE OF FLORIDA)
COUNTY OF DADE) SS:

Before me the undersigned authority, duly qualified as a notary public in the State of Florida, personally appeared Martha Neham Edelstein, to me known, and upon oath, duly sworn, deposes and says:

1.My name is Martha Neham Edelstein

2. I am a resident of Dade County, Florida

3.I have known Edith Horowitz Broida since 1938. We both attended the University of Miami and majored in the School of Education.

3. We have been friends continuously since then.

4. My parents were residents of Miami Beach since the early 20's.

5. I knew the parents of Edith and was in their home many times,and also in their store. I knew Edith's husband and her daughter Stacie. I have also seen her grandson Thomas Blaine.

6. Edith resided with her parents at 1931 Meridian Avenue, Miami Beach.

7. After the death of her father and she and her brother Alvin were contesting the Will prepared by attorney Harold Shapiro which was dated about a month before her father's death I stated to Edith: " I wondered if you knew that your father has been senile for a number of years."

8. I testified at the trial on the Will contest against that Last Will, called by Edith and her brother Alvin, that their father had definitely lacked his former mental

faculties and would not have had testamentary capacity to make a Will in the last five years of his life.

9. I know that Edith moved to WAshington, D.C. in January 1963. My sister lived in Maryland outside Washington. I was in Maryland to visit my sister. My sister and I both visited Edith where she lived in Washington, D. C.

10. Edith distinctly stated that she was moving to Washington to work for the federal government to try to plan programs to improve the educational system.

11. Edith has returned from Washington many times for the needs of her parents and daughter.

12. In 1967 and 1968 I saw her in the store of her parents working there and managing it because of business difficulties. She said she is there temporarily hoping to return to Washington as soon as the problems are resolved.

13. I saw her in 1971 when her grandson was born and she came down for the birth. Again she came down for her father's health, who was hospitalized with a heart attack.Again she came for a lawsuit against her parent's home by the City of Miami Beach, and came again for that lawsuit.

14. Her mother died in 1977 while she was here. Edith had a multitude of family problems. She had to take charge of her mother's 85 year old sister whose husband had died and took care of problems of that husband, his burial and his financial affairs as well.

15. Her father died in February 1978 and she has said that because of the two estates she has had to be here continuously except for quick trips back to her home in Washington.

16. Edith has always made it clear to me that she prefers to live in Washington, that she loves that City, and enjoyed her work there. I have told her many times that she should have just returned to Washington, where she most wanted to be, after the deaths of her parents.

17. She has told me that in 1987 she changed her domicile, that is, her legal residence to Washington, D. C.

Further Affiant Saith Not.

/S/ Martha Neham Edelstein
E342-554-24-958

Subscribed and sworn to before me Witness my hand and seal this 14th day of September, 1992.

/s/Inna Sandler
Notary Public, State of Florida at Large

My Commission Expires: 4/96

Notary Public
State of Florida

Inna Sandler
My Commission
#CC194323
Expires: April 16,1996
Bonded Thru Notary Public Underwriters

AFFIDAVIT
OF PHYLLIS SHAMPANIER

Before me the undersigned authority, duly qualified as a notary public to take acknowledgements in the State of Florida, personally appeared Phyllis Shampanier, to me known, who upon oath, being duly sworn, deposes and says:

1. My name is Phyllis Shampanier, and my address is 8115 S.W. 17th Terrace, Miami, Florida.

2. I am an attorney at law practicing in Dade County since 1953 when I graduated from the University of Miami School of Law.

3. I have known Edith Broida since law school.

4. I know that Edith moved to Washington, D.C. She referred several clients of hers to me when she moved. Her daughter Stacie also used my services. She had an attorney listing at my office in Coral Gables which was discontinued when I moved into a large firm on Miami Beach.

5. Several times when Edith came back to visit from Washington I asked her why she doesn't come back and join me in practice, showing her space adjacent to mine which could be joined to mine. Her reply always was that she was happy in Washington and enjoyed the work she was doing in government agencies and did not want to return to Dade.

6. I do know that she had to have a protracted stay for her parent's business in the late sixties. And I know that she has been in Miami for a eminent domain case on her parents' property, and that they died in the late 70's and she has been involved

in their estate probates and litigation, which has become another protracted stay.

7. I believe that Edith's intention has always been since she moved to Washington to be there indefinitely and not be in Florida.

8. We have corresponded and I know that she has resided in Washington and still has a residence there as she has told me.

Further Affiant Saith Not.

/S/ Phyllis Shampanier
Phyllis Shampanier

Subscribed and sworn before me.
Witness my hand and seal this
12th day of April, 1993.

/S/ Karla Haspael
Notary Public, State of Florida
at Large
My Commission Expires:
Notary Public, State of Florida
My Commission Expires Aug 25, 1994
Bonded Thru Notary Public Underwriters

26 (Copy of Petitioner's Letter to her Mother, from Washington to M.B.)

Dear Mother, 7/30/74

Thank you, I received the $500. It helps a little but not much. In the past year I spent 8 months in Miami. During that time I still have to pay rent on my apartment $228 a month, telephone $10 a month, gas $200 a month-a total of $240 a month-for 8 months that is $1920, which is already more than you pay rent on your house for a whole year. Your taxes are your rent. The three months I was there last time or any time I disrupt my own life completely. When I come back I have all kinds of problems because I haven't been home that then take me months to straighten out. Then there is the cost of the fare, tips, food each trip is at least $220 for that. What you gave me when I was there only barely covers some things- The cars I rent. Here I have my car in storage for which I pay $27 a month.

Then the strain on me there generally sends me to the doctor when I get back with something.

Last time on the trip back I got off the train with a flaming red right eye.

Ann Horowitz kept daughter Broida's letters to her with the envelopes.

SUPERINTENDENT OF SCHOOLS
FRANKLIN ADMINISTRATION BUILDING
13th and K Street N.W.
Washington, D. C.

Model School Division

March 19, 1965

Mrs. Edith E. Broida
824 New Hampsire Avenue, N. W.
Washington, D. C.

Dear Mrs. Broida:

A board order appointing you as Coordinator of the Summer Enrichment Program(Model School Division) was submitted to the Board of Education at the meeting held on March 17, 1965.

Before you can be placed on the payroll, it will be necessary for you to come in and sign certain papers. Please call me at Sterling 3-6111, extension 231,232 and let me know when you can come in to sign these papers.

Yours truly,

/S/ Doris P. Lee
Doris P. Lee
Administrative Aide
Model School Division